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## Appeal Decision

Site visit made on 21 July 2020

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 August 2020**

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**Appeal Ref: APP/D4635/C/20/3248266**

**11 Leighton Road, Wolverhampton, WV4 4AP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Hardeep Singh against an enforcement notice issued by Wolverhampton City Council.
  - The enforcement notice was issued on 30 January 2020.
  - The breach of planning control as alleged in the notice is the creation of a raised terrace in the rear garden of 11 Leighton Road, Wolverhampton, WV4 4AP.
  - The requirements of the notice are: -
    1. Remove the unauthorised patio area and steps.
    2. Return the level of the land to the level which existed before development commenced.
    3. Remove all waste materials arising from the required works to a lawful place of disposal.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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### The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
2. I observed at my site visit that there are 2 raised terraces at different ground levels and 2 sets of steps within the rear garden of 11 Leighton Road. As such, I consider that there could be uncertainty as to which raised terrace the breach of planning control within the enforcement notice relates to. Moreover, requirement 1 of the enforcement notice relates to an '*unauthorised patio area and steps*' which does not reflect the description of the alleged breach and does not specify which set of steps are to be removed.
3. At the site visit the Council confirmed that the enforcement notice relates to the raised terrace that is at the lower level and lower set of steps. After the site visit, I requested both main parties' comments on my suggested corrections to the description of the alleged breach and requirement 1 and whether those corrections could be made without injustice to either of them. The Council responded and stated that the suggested corrections could be carried without injustice to the appellant.
4. Taking into account all of the above, I intend to add the wording '*and associated steps*' between the words '*terrace*' and '*in*' within the description of

the alleged breach. I also intend to delete the wording '*unauthorised patio area and*' and replace it with '*lower level raised terrace and the lower set of*' within requirement 1 of the notice.

5. The scope of the notice is limited by section 173(4)(a) and (b) of the 1990 Act. Where planning permission has not been granted for the development, the power is to restore the land to its previous condition. As such, the wording '*to a lawful place of disposal*' at the end of requirement 3 is not necessary and I intend to delete it and replace it with '*from the land*'. I can carry out these corrections without injustice to the parties.

## **The ground (a) appeal and deemed planning application**

### **Main Issue**

6. The main issue is the effect of the development on the living conditions of the occupiers of 9 Leighton Road with regards to privacy.

### **Reasons**

7. The appeal site comprises a semi-detached dwelling and its associated grounds. The dwelling has been appreciably increased in size with single storey extensions. Due to the topography the ground levels adjacent to the rear boundary of its garden are significantly lower than the ground floor level of 11 Leighton Road (No 11). As stated above, there are 2 raised terrace areas adjoining each other within the rear garden of No 11.
8. The one raised terrace area, that is adjacent to the single storey extensions, is at a similar ground level to that of the ground floor level of No 11 and those extensions. It is at a higher level to that of the raised terrace that is the subject of the enforcement notice. Nevertheless, the lower raised terrace is considerably higher than the ground levels of the soft landscaped part of the garden and there are steps from that raised terrace to the remainder of the garden. A planning application to retain the raised terrace was refused by the Council in January.
9. There is a single storey extension across the rear elevation of 9 Leighton Road (No 9) and a raised terrace area adjacent to that extension. The extension at No 9 does not project as far as the extension at the appeal site and the raised terrace area at No 9 appears to extend into the garden a similar distance and appears to be at a similar level to the higher raised terrace at No 11.
10. The raised terrace, that is the subject of this enforcement notice, extends a substantial distance into the garden area and the height of the boundary fence between No 11 and No 9 reduces in height in a similar correlation to the ground levels of the terraces and landscaped garden at No 11. During my visit to the appeal site I noted that, from parts of the lower level raised terrace, there are clear views over the existing boundary fence into and across the garden of No 9 and its rear elevation. In this context I consider that the development has resulted in a significant loss of privacy to the occupiers of No 9 due to its depth and height. As a result, I consider that the development results in significant harm to their living conditions with regards to privacy.
11. Both the Council and the appellant have suggested that the existing boundary treatment adjacent to the lower raised terrace could be raised in height to around 2 metres above the level of that terrace to mitigate the harm identified

above. The gardens to these properties are particularly long and the occupiers of No 9 enjoy an attractive outlook over a large part of their garden. However, I noted that the soft landscaped area of No 9's garden adjacent to their raised terrace is at a substantially lower ground level than that of their terrace. Moreover, it appears to be at a considerably lower ground level to that of the lower level raised terrace at No 11.

12. Consequently, to raise the height of the boundary treatment, as a fence or wall, along the depth of the development would result in an overbearing and unduly dominant feature when viewed from within the house and the soft landscaped area of the garden at No 9. This would result in unacceptable harm to the living conditions of the occupiers of No 9 with regard to outlook. As such, I am unable to require, through the imposition of conditions, an increase in the height of the fencing along the boundary with No 9.
13. The appellant has also suggested that he could plant ivy, vines, bamboo or other plants and trees to screen out any views. Nevertheless, I have not been provided with any specific landscaping proposals to indicate how long the plants would take to provide sufficient screening, whether they would provide all year-round screening and where that landscaping would be planted. As such, I cannot be certain that landscaping would mitigate the harm identified above.
14. I appreciate the appellant's desire to provide a safe garden area for all members of his family and that there is often a difficulty in achieving that aim within gardens that are situated on sloping topography. However, it appears to me that this aim could be achieved by other means especially given that the neighbouring gardens I saw at my site visit appear to be well used by occupiers of various ages.

#### *Other Matters*

15. I appreciate that the appellant undertook the works in good faith, did not seek to flout the planning regulations and that he consulted with a number of industry specialists (including his builders). Moreover, there is no ground (c) appeal before me, that the matters did not constitute a breach of planning control, and there is no suggestion that in its current form the development is not a breach of planning control. I have also noted the points made by the appellant about the Council's handling of the matter. However, these points have not affected my decision, which is based on the planning merits of the proposal.
16. The references to other development plan policies have been noted. However, the development plan policy to which I have referred is considered the most relevant to this appeal.

#### *Conclusion- ground (a) appeal and deemed planning application*

17. For the reasons given above and taking into account all other matters raised, I conclude that the development has caused harm to the living conditions of the occupiers of No 9 with regards to privacy. It follows that the development conflicts with Policy ENV3 of the Black Country Core Strategy which states, amongst other things, that development proposals will deliver a successful urban renaissance through high quality design. It also conflicts with paragraph 127 of the National Planning Policy Framework which sets out, amongst other

things, that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users. In this case, there are no material considerations to indicate that the appeal should be determined other than in accordance with the development plan.

18. In view of the above, I conclude that the appeal on ground (a) must fail. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

### **The ground (f) appeal**

19. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
20. The notice does not specify which of the two purposes it seeks to achieve. Nevertheless, the requirements are to remove all of the development from the land that forms the raised terrace and steps. As stated above, I intend to correct the notice to ensure that there is clarity as to which raised terrace and steps are affected by the enforcement notice. Essentially, the enforcement notice requires the removal of all works that have formed the breach of planning control alleged in the notice. I am satisfied therefore that the purpose of the notice is to remedy the breach of planning control.
21. The appellant argues that the requirements of the notice could be amended to effectively retain the raised terrace and the steps as they have been constructed but to raise the height of the fencing and/or to plant landscaping. I have considered these proposed alternatives as part of the ground (a) appeal.
22. The appellant has also stated that the removal of the materials would need to be done through the dwelling causing damage to its interior finishes, emotional distress and that he does not have enough finances to carry out the works. Nevertheless, the compliance period for the enforcement notice is 6 months so the works could be carried out during that period to allow the material to be taken safely and carefully through the dwelling. Moreover, given the Council's suggestion below the 6 month period would allow him the time to submit, to the Council, an alternative scheme.
23. The Council has suggested that the lower level of the terrace could be reduced to permitted development levels. At the site visit the Council confirmed that in this respect it was citing the definition of a raised platform as included within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Paragraph I of Part 1 of Schedule 2 of the GPDO states, amongst other things, that *'For the purposes of Part 1 - .... "raised" in relation to a platform means a platform with a height greater than 0.3 metres...'*
24. Nevertheless, it is not readily apparent from the evidence before me, that the lower level raised terrace could be altered to reduce its height so that it would not constitute a raised platform as defined in the GPDO. In addition, without details or drawings I am unable to fully assess whether the changes suggested by the Council would be possible or in line with permitted development

tolerances. Neither am I able to vary the notice to the necessary level of precision in this respect.

25. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeal on ground (f) fails.

### **Overall Conclusion**

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

### **Formal Decision**

27. It is directed that the enforcement notice be corrected by: -

- adding the words '*and associated steps*' between the words '*terrace*' and '*in*' within the description of the alleged breach;
- deleting the wording '*unauthorised patio area and*' and replace it with '*lower level raised terrace and the lower set of*' within requirement 1 of the notice;
- deleting the words '*to a lawful place of disposal*' at the end of requirement 3 and replace them with '*from the land*'.

28. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

*D. Boffin*

INSPECTOR